

MINUTES } CITY OF PIKEVILLE

REGULAR MEETING MINUTES - SEPTEMBER 10, 1990

The City of Pikeville Board of Commissioners met in regular session on Monday, September 10, 1990. The meeting was conducted at the City Commission's regular meeting place in the City Hall Public Room located at 260 Hambley Boulevard.

Mayor Walter E. May presided. There being a quorum present, the meeting was called to order at 7:00 p.m. Commission Members present upon call of the roll were as follows:

MAYOR:	WALTER E. MAY
COMMISSIONER:	WALTER BLANKENSHIP
	EUGENE DAVIS
	FRANK MORRIS
	JOHNNY MOUNTS

AGENDA ITEM II. CALL OF THE AGENDA
 Agenda Item V. A and B, Payment of Bills, was changed to be considered after Agenda Item VIII., Personnel Actions.

AGENDA ITEM III. MINUTES

The minutes for the previous regular meeting of August 27, 1990 were included in each Commission Member's agenda package. There being no additions or corrections, Commissioner Mounts made the motion, seconded by Commissioner Davis to approve the minutes as submitted. Upon call of the roll, the motion carried unanimously.

AGENDA ITEM IV. BUSINESS FROM THE FLOOR

James "Sarge" Balser, a resident of Peach Orchard, addressed the Commission on the following matters:

1. Peach Orchard Road: Mr. Balser advised the Commission that the Peach Orchard Road has been in unsatisfactory condition for the past 10 months. Mr. Balser advised that when oncoming traffic is faced, vehicles must go through a gravelled area. A ditch goes across the road near the entrance of the WPKE Radio Station. Mr. Balser advised that he has had to have his vehicle realigned twice in this time period. In the vicinity of the Virgil Ray residence, the roadway has broken away. Mayor May reported that the road conditions were a result of the repairs that had been made to the water lines during the January water problems. City Manager, John Johnson, explained that he had contacted Mountain Enterprises approximately three weeks ago, and a price was given for making the necessary repairs to the road. The repairs were scheduled to have been done during the week of September 3rd. Mr. Johnson reported he would find out why the repairs had not been made.

2. Sewage: Mr. Balser reported that a dwelling belonging to Mark Sohn allegedly is not connected to the City's sewer system as raw sewage is running from that dwelling over the hill. Mr. Balser contends that the dwelling was condemned at the time Dr. Russell was the health officer. City Attorney, Rusty Davis, reported that the Health Department would normally take care of complaints dealing with sanitation. Mr. Davis indicated that the City could take action pursuant to the "Nuisance Ordinance" and issue a citation. The Building Inspector (City Engineer) was directed to inspect this parcel and determine if the "Dilapidated Housing Ordinance" guidelines apply. Mr. Balser discussed the need for the weeds on Julius Avenue to be cut. The City Manager reported that he had placed a work order with PSG to have the weeds cut on Poplar Street, Jay Street and Julius Avenue. Commissioner Mounts suggested instituting a maintenance plan that would provide weeds would be cut in the early spring and spray a weed deterrent. The Mayor objected to spraying due to the aesthetic value being destroyed by the spray.

3. Utility Bills: Mr. Balser displayed the previous three utility billing cards that he has received from the City of Pikeville. Mr. Balser reported that the bills are identical and contended that the meters are not being read. After visiting the utility office, it was decided that a new meter would be installed, however this has not yet been done. Willie Brown of PSG was directed to install a new meter at the Balser residence on September 11, 1990. The City Manager was directed to work with PSG to determine what the problem is when

residents receive identical monthly billings.

David Stratton appeared before the Commission to address several issues on behalf of ten families who reside on Peter Fork of Chloe Creek.

1. Mr. Stratton explained that on the Left Fork of Peter Fork of Chloe, some gentlemen have applied for a mining permit. Mr. Stratton voiced that it was his understanding that this thoroughfare is a county road where state mining authorities have the ability to correct any mining violations or road violations occurring from mining activity. Mr. Stratton advised that it had been brought to his attention that the surface owner and the lessees of the coal are intending to prepare a deed to have this road accepted into the City's road system. Mr. Stratton requested that the Commission not accept this roadway for the following reasons:

a. If the City acquires the road, the state loses its ability to properly enforce the maintenance of the road through cessation orders and other items the state has in their power.

b. Mr. Stratton contended it would be an additional hardship on the City and cited that an agreement with Dan Walters d/b/a Pike County Collieries (uses the road for coal hauling with the provision that .10 cents per ton be placed in an escrow account to cover road repairs) has not been enforced which places the responsibility of road maintenance entirely on the City.

2. Mr. Stratton advised that the material from sidewalk replacements have been dumped in front of one of his clients' dwelling on Peter Fork. Mr. Stratton queried as to why this particular site was chosen. Dick Vincent, sidewalk contractor, advised the Commission that he had been asked by the property owner to place the material on his property.

3. Mr. Stratton addressed the agreement between the City and Dan Walters d/b/a Pike County Collieries to maintain the road that presently goes up Peter Fork. Suit has been filed against Mr. Walters d/b/a Pike County Collieries for failure to comply with the terms of the contract. Mr. Stratton told the Commission that the residents are having to endure a severe problem with dust as a result of coal trucks travelling the road. The residents along Peter Fork Road have asked that the City to have water put on the road or take some other type action to help alleviate the dust. The Commission directed PSG to place water on the Peter Fork Road the following morning and advised that they would get back with Mr. Stratton to advise the schedule for further dust control measures.

Steve Combs, on behalf of Dan Walters, asked Mr. Stratton to identify the ten families so he can determine where the problems with the road are located. Mr. Stratton indicated he would work through Mr. Combs pursuant to Mr. Walter's request for information.

City Attorney, Rusty Davis, advised the Commission that the road problem needs to be addressed. It is Mr. Davis' assumption that the road problems stem from coal truck traffic. Mr. Davis confirmed the fact that another company has applied for a mining permit on the Left Fork of Peter Branch. The City does have an agreement with Dan Walters to help provide for the upkeep of the road with regard to his mining activity. The agreement provides that Mr. Walters' company is to pay for the materials for blacktopping and also provides that .10 cents per ton for all the coal mined is to be placed in an escrow account. Mr. Davis indicated that there is a disagreement relative to the contract, but is hopeful that the matter can be resolved. Mr. Davis stressed the necessity for the Commission to address measures to provide for road maintenance in future mining activities and those companies which want to use a city street for hauling coal. Mayor May announced that the City encourages mining activity, however the City has a responsibility to see that the roads are kept in a well-maintained condition. The Commission authorized the City Attorney to negotiate with future mining operators in the Peter Fork area on an agreement to assist with road maintenance. Steve Combs pointed out that Kentucky Cities and Counties do not have the power to issue excise taxes. Mayor May announced that the City is not considering levying an excise tax on coal mines. James Tucker, a former City Employee, addressed the Commission with regard to attaining a retirement benefit. Mr. Tucker explained that he began work for the City of Pikeville in 1960, employment was

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interrupted when he went to work for the County, however he did return to City employment. City employment ended when the City and PSG entered into an agreement for operation and maintenance of the Public Works Department. After working for Professional Services Group for 90 days, Mr. Tucker was laid off. Mr. Tucker was advised to review this matter with the City Manager.

Mr. Tucker advised the Commission that a dwelling located above him on Peach Orchard has raw sewage running over hill. Jack Sykes was directed to look at this problem.

AGENDA ITEM VI.

OLD BUSINESS

A. CITY ENGINEER'S REPORTS: City Engineer, Jack Sykes, gave a verbal report of ongoing City Projects:

1. Water Tank Painting/Repair: The contracts for the painting of the Peach Orchard Water Tank have been forwarded to the contractor. Work is estimated to begin within one week.

2. Industrial Rubber Sewer Line Extension: Bids were opened for the sewer line extension to serve Industrial Rubber. A summary of the bids was given to each Commission Member. Mr. Sykes indicated that the bids came in considerably higher than the \$40,000.00 engineer's estimate. The low bid was received from Haren Construction Company in the amount of \$57,527.00. Mr. Sykes reviewed a couple of the line item bids and compared the prices with quotes submitted for other city projects of comparable work. Haren Construction submitted a bid of \$57.00 per foot for 8 inch PVC sewer line and \$165.00 per foot for the bore and jack encasement under US 23. \$24.00 per foot was paid on the South Mayo Trail Sewer extension; \$15.00 per foot was paid for the Williams Hollow sewer line extension. Mr. Sykes told the Commission that he had gotten quotes from independent contractors for the bore and jack and received a price of \$15,255.00 compared to the \$18,645.00 submitted by the low bidder. Mr. Sykes recommended that the Commission reject all bids and to consider hiring an independent contractor for the bore and jack and encasement under US 23 and have the City (PSG) crews to install the line. Commissioner Davis made the motion to reject all bids. Commissioner Blankenship seconded the motion. Upon call of the roll, the motion carried unanimously. With regard to Mr. Sykes' recommendation that the City hire an independent contractor for the bore and jack and have city crews to install the sewer line, Commissioner Mounts made the motion to defer the project until the funds are available. Commissioner Blankenship seconded the motion. Mayor May added that it is the City's intent to do the project and reported that this time of year is a historically slow collection period. Upon call of the roll, the motion carried unanimously.

3. Status reports were given to each Commission Member for the Wastewater Treatment Plant Project and for Building Inspections. Mr. Sykes reported that the Wastewater Treatment Plant construction is proceeding at a satisfactory rate. Mayor May advised Mr. Sykes that complaints have been received regarding the access into the Animal Shelter. Mr. Sykes advised the Commission that it is difficult to maintain the access due to the scope of construction and the fact that there are three contractors on the site. Mr. Sykes indicated that as soon as the first plant has been installed and the trickling filter is removed an alternate access can be constructed. The Commission directed Mr. Sykes to give written notice to PSG to make every effort to maintain a safe access to the Animal Shelter. Commissioner Mounts reported that he has had complaints relative to the behavior of the laborers toward female patrons of the Animal Shelter. The City Manager was directed to write a letter to PSG with copies to all the subcontractors that the City has received complaints with regard to the laborers behavior toward women delivering animals to the Animal Shelter.

Mr. Sykes requested an executive session to discuss property acquisition in the Keyser Hollow area.

B. CITY ATTORNEY'S REPORTS: City Attorney, Russell Davis, Jr., presented the following reports:

1. Zoning: Mr. Davis reported that first reading of an Ordinance to amend the zoning map will be delayed until the next regular meeting.

2. Second Reading was given to an Ordinance entitled:

ORDINANCE FINALLY ANNEXING TO THE CITY OF PIKEVILLE THE TERRITORY LYING

ADJACENT TO THE PRESENT CITY CORPORATE LIMITS AND COMPRISING OF APPROXIMATELY FIVE HUNDRED AND FIFTY (550) ACRES WHICH WOULD EXTEND THE CITY CORPORATE LIMITS WESTWARD TO INCLUDE THE WATERSHED OF CEDAR CREEK

Commissioner Davis made the motion to adopt the Ordinance. Commissioner Blankenship seconded the motion. Upon call of the roll, the motion carried by the following votes:

MAYOR:	WALTER E. MAY	YES
COMMISSIONER:	WALTER BLANKENSHIP	YES
	EUGENE DAVIS	YES
	FRANK MORRIS	YES
	JOHNNY MOUNTS	ABSTAIN

3. First Reading was given to an annexation ordinance which deals with tract 1990-5 (South Mayo Trail). Mr. Davis explained that a petition was received in opposition to annexation, however it was declared invalid due to the petition not containing the required number of signatures to have the matter placed on the election ballot. The Ordinance was read entitled:

ORDINANCE FINALLY ANNEXING TO THE CITY OF PIKEVILLE THE TERRITORY LYING ADJACENT TO THE PRESENT CITY CORPORATE LIMITS AND COMPRISING OF APPROXIMATELY 950 ACRES WHICH WOULD EXTEND THE CITY CORPORATE LIMITS SOUTHWARD ON THE NORTH SIDE OF THE LEVISA FORK OF THE BIG SANDY RIVER TO A POINT APPROXIMATELY OPPOSITE FROM FORDS BRANCH

The Ordinance is to remain on file in the office of the City Clerk for a period of at least ten days for public inspection.

4. The City Attorney gave second reading to an Ordinance entitled:

AN ORDINANCE PROVIDING PENALTIES FOR FAILURE TO ACQUIRE WORK PERMIT AND PROVIDING FOR LIENS ON PROPERTY WITH UNPAID OCCUPATIONAL TAXES

Commissioner Morris made the motion, seconded by Commissioner Mounts to adopt the Ordinance.

During a lengthy discussion, Commissioner Mounts voiced his opposition to the provisions of the Ordinance which makes the property owner responsible for payment of occupational fees that the contractor fails to pay. Commissioner Mounts pointed out that the Building Inspector should be responsible for seeing these fees are collected. Several alternatives were discussed, however the motion to adopt the Ordinance was withdrawn. Commissioner Mounts made the motion, seconded by Commissioner Blankenship to table the matter. The motion carried unanimously. With regard to the resolution providing for a "finders fee" to City employees who notify the Building Inspector's office of work being done without a permit, Commissioner Blankenship reiterated his opinion that the Police Department should be exempt from obtaining the \$10.00 fee based on the assumption that it is the Police Department's duty to enforce City Ordinances. Commissioner Blankenship made the motion to table discussion on the Resolution. The motion died from lack of a second.

Mr. Davis advised the Commission that John Pinson's company is in the process of refinancing a loan for Bob Bishop. A portion of Mr. Bishop's house is located in a dedicated, but unconstructed roadway known as Derby Street, however, due to the steepness of the grade, it is doubtful the road can be completed. Mr. Davis recommended that the Commission adopt an Ordinance to close the street. First reading was given to an Ordinance closing a street in the T. J. Williamson Subdivision lying within the property owned by Robert Bishop.

Mr. Davis told the Commission that he has two matters to bring before them in executive session dealing with pending legal action and negotiations for cancellation of a lease.

3. CITY MANAGER'S REPORTS: City Manager, John Johnson, reported that he has a matter concerning retirement to discuss in executive session.

At 8:30 p.m., Commissioner Davis made the motion to adjourn to an executive session to discuss a personnel matter, legal matters, and property acquisition. Commissioner Morris seconded the motion. Upon call of the roll, the motion carried unanimously.

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Upon motion by Commissioner Davis and seconded by Commissioner Blankenship, and a unanimous vote, the meeting reconvened to regular session at 10:45 p.m.

City Engineer, Jack Sykes, reported that the Department of Transportation owns the surface and mineral rights in Keyser Hollow around and above Keyser Subdivision. The D.O.T. has offered to sell to the City of Pikeville the surface and the coal for \$117,000.00 and the gas well and the gas rights for \$126,000.00. Mr. Sykes reported that he has information which indicates that the gas well is no longer producing. Mr. Sykes recommended that the City offer to purchase all the mineral rights and the surface for \$150,000.00 with the understanding that D.O.T. will grant permission for the City to bleed the gas well and check the production. Commissioner Morris made the motion to accept the City Engineer's recommendation. Commissioner Blankenship seconded the motion. Upon call of the roll, the motion carried by a 5 - 0 vote.

City Attorney, Russell Davis, reported that the Commission has reason to believe that the Water Treatment Plant was improperly designed and constructed. The plant has been evaluated by professional engineers, who have advised that the engineering firm who designed the Water Treatment Plant, R. D. Zande & Associates, Ltd, breached their contract. Mr. Davis recommended that a resolution be adopted authorizing the City Attorney to file suit on behalf of the City of Pikeville. The resolution was read as follows:

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE A CIVIL ACTION AGAINST R. D. ZANDE AND ASSOCIATES, LTD. R-90-024

WHEREAS, the City of Pikeville has determined that R. D. Zande and Associates, Ltd. has breached a contract with the City of Pikeville whereby they agreed to properly prepare plans and specifications for the construction of a water treatment plant and for the inspection of construction of said water treatment plant and that their breach of this contract and their failure to exercise ordinary and reasonable care and skill in providing those services has resulted in the Pikeville Water Treatment Plant being unfit for its intended use and will result in the City of Pikeville incurring costs in excess of \$650,000.00 to correct certain deficiencies and improve the water treatment plant's performance, safety, operation and maintenance;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF PIKEVILLE that the City Attorney is hereby authorized to file a civil action in the Pike Circuit Court against R. D. Zande and Associates, Ltd. to recover the costs which will be necessary to correct certain deficiencies in the water treatment plant and to improve the plant's performance, safety, operation and maintenance, which costs were the result of R. D. Zande and Associates, Ltd.'s failure to complete its duties and obligations in respect to their contract with the City of Pikeville to design and inspect the construction of the City of Pikeville's Water Treatment Plant and for their failure to exercise ordinary and skill in providing professional engineering services to the City of Pikeville.

Passed this 10th day of September, 1990.

Commissioner Walter Blankenship moved the adoption of the foregoing resolution. Commissioner Frank Morris seconded the motion.

Upon roll call, the votes were as follows:

	<u>YES</u>	<u>NO</u>
WALTER E. MAY, MAYOR	X	
GENE DAVIS, COMMISSIONER	X	
FRANK MORRIS, COMMISSIONER	X	
JOHNNY MOUNTS, COMMISSIONER	X	
WALTER BLANKENSHIP, COMMISSIONER	X	

The Mayor declared the within resolution adopted.

/s/ Walter E. May
WALTER E. MAY, MAYOR

ATTEST:

/s/ Karen Harris
KAREN HARRIS, CITY CLERK

Commissioner Blankenship made the motion to approve payment of City Bills totaling \$197,663.21. Commissioner Morris seconded the motion. Upon call of the roll, the motion carried unanimously.

Police Chief Edmonds made the recommendation that the Commission hire Phillip W. Stanley in the position of Traffic Control Officer. City Manager, John Johnson, recommended that Mr. Stanley be employed on a part-time basis since he is a college student. Commissioner Davis made the motion to employ Phillip W. Stanley in the position of traffic control officer on a part time basis. Commissioner Mounts seconded the motion. Upon call of the roll, the motion carried unanimously.

The City Manager was directed by the Commission to prepare a report and make a recommendation as to how cases involving retirement benefits for ex-city employees should be handled, the cost involved, and a determination as to what the City can afford to do.

Mayor May announced that there will be a vacancy on the Tourism & Recreation Commission as of January 1, 1991. The Mayor nominated Kitty Pauley to fill this vacancy. Commissioner Blankenship made the motion, seconded by Commissioner Morris to appoint Kitty Pauley to serve on the Tourism & Recreation Commission. The motion carried unanimously.

Mayor May announced that the Secretary of Tourism will be in Pikeville on September 11th.

There being no further business to come before the Commission, Commissioner Blankenship made the motion, seconded by Commissioner Davis to adjourn the meeting. The motion carried unanimously. (Adjournment time: 10:55 p.m.)

The City Commission's next scheduled meeting is September 24, 1990 at 7:00 p.m. and will be held in the City Hall Public Meeting Room.

APPROVED: Walter E. May

WALTER E. MAY, MAYOR

ATTEST:

Karen Harris
KAREN HARRIS, CITY CLERK